

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 27, 2014 at 9:32 A.M.

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1. [12-24504](#)-B-13 JOEY MEYER AND NAKESHA MOTION FOR COMPENSATION BY THE
SCG-2 FOX-MEYER LAW OFFICE OF GONZALES & PFAFF
FOR SALLY C. GONZALES, DEBTORS'
ATTORNEY(S)
4-29-14 [[37](#)]

Tentative Ruling: The motion is denied without prejudice.

The application is denied because the applicant has shown no evidence that the fees for which she seeks approval constitute "reasonable compensation for actual, necessary services." 11 U.S.C. § 330(a). There are no timesheets filed with the application, nor is there any description in the application itself of the services rendered by the applicant for which approval of fees is sought. It appears that the applicant is attempting to obtain approval of the fees on a "no-look" basis, but the fixed "no-look" fee allowed by Local Bankruptcy Rule 2016-1 can only be approved in connection with confirmation of the chapter 13 plan. A chapter 13 plan was confirmed in this case by order entered August 6, 2012 (Dkt. 28), more than twenty-one months before the date of this hearing. The order confirming the plan does not contain any provision approving attorney's fees for the applicant. To obtain approval of fees, applicant must now comply with 11 U.S.C. §§ 330 and Fed. R. Bankr. P. 2016. For the reasons stated above, the instant application does not meet those requirements.

In addition, the applicant did not give sufficient notice of the motion to parties in interest. Fed. R. Bankr. P. 2002(a)(6) requires that an entity's request for compensation or reimbursement of expenses exceeding \$1000.00 must be served on, inter alia, all creditors. The applicant's certificate of service (Dkt. 40) shows that the motion was served only on the chapter 13 trustee and the United States trustee.

The court will issue a minute order.

2. [12-34606](#)-B-13 MICHAEL/JENNIFER MACAGBA MOTION TO MODIFY PLAN
SDB-1 4-15-14 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed April 15, 2014, is confirmed.

The court will issue a minute order.

3. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO MOTION TO CONFIRM PLAN
DRE-2 AVINA-SEGURA 4-15-14 [[126](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The oppositions filed by secured creditor TD Auto Finance, LLC ("TD") are sustained in part and overruled in part. The motion to confirm the amended plan filed April 15, 2014, is denied.

The chapter 13 trustee's opposition is sustained for the reasons set forth therein.

TD's opposition is sustained only to the extent that TD objects to the plan's proposal of a monthly payment that does not equal the aggregate of all fees, installment payments and dividends required by the plan. TD's other objections are overruled.

TD's assertion that the debtors must file a separate motion to value TD's collateral is overruled because no such motion is necessary. The debtors propose to treat TD's secured claims as class 2A claims, which pursuant to the terms of the plan are "claims not reduced based on value of collateral." The debtors have proposed plan treatment for TD's secured claims which would result in payment in full of the secured claims in their filed amount within the 60-month plan term.

TD's objection under 11 U.S.C. § 1325(a)(3) that the plan is not proposed in good faith is also overruled. TD argues that the plan is not proposed in good faith because the debtors have had two prior bankruptcy cases that were pending and dismissed within the one year period prior to the filing of the instant case, and because the plan proposes to dividends and installment payments in an aggregate amount that exceeds the proposed monthly plan payment. These facts, standing alone, do not amount to evidence of a lack of good faith in proposing the plan. "Bad faith" under 11 U.S.C. § 1325(a)(3) is determined based on an examination of the totality of the circumstances. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). The court does not consider multiple filings alone to constitute evidence of bad faith. See Downey Savings and Loan Ass'n v. Metz (In re Metz), 820 F.2d 1495, 1497 (9th Cir. 1987). It is not incumbent on the court to search through the records of the debtors' prior cases in order to uncover additional facts which would support TD's argument. The court notes that it has previously informed TD of the foregoing standards in connection with its ruling on TD's identical argument in opposition to the debtors' prior amended plan. The court reminds TD's counsel of its obligations under LBR 9014-1(d)(5) to cite the legal authority on which TD relies and its obligation under Fed. R. Bankr. P. 9011(b)(2) to present claims that are warranted by existing law.

The court will issue a minute order.

4. [13-29606](#)-B-13 MARIA AVINA AND GUILLERMO COUNTER MOTION TO DISMISS CASE
DRE-2 AVINA-SEGURA 5-2-14 [[134](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 10, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

5. [11-26307](#)-B-13 VICTOR/PATRICIA GUZMAN MOTION TO COMPROMISE
WW-1 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ONEWEST BANK,
FSB, ET AL.
5-6-14 [[56](#)]

Tentative Ruling: The motion is continued to June 10, 2014, at 9:32 a.m., for supplemental briefing on the following issue: 1.) The legal authority or authorities allowing the parties to the Settlement Agreement that is the subject of this motion to redact provision(s) from the Settlement Agreement for the purpose of concealing those provision(s) from parties in interest based on a contractual provision regarding said redaction in the Settlement Agreement. The debtors shall file and serve the supplemental brief on or before June 3, 2014.

The court will issue a minute order.

6. [13-31707](#)-B-13 RONALD/DANA FRANCO OBJECTION TO CLAIM OF LAURA
SJS-2 JEAN BEMIS, CLAIM NUMBER 7
4-16-14 [[36](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. Claim number 7 on the court's claims register (the "Claim") filed on October 4, 2013, in the amount of \$710.00

by Laura Jean Bemis ("Bemis") is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid by the trustee as a priority claim in excess of the dividend to general unsecured creditors.

The debtors object to the asserted priority status of the Claim. The Claim asserts priority status under 11 U.S.C. § 507(a)(7), which grants priority status to the claims of individuals arising from the deposit before the commencement of the case of money in connection with the purchase, lease or rental of property, or the purchase of services, for the personal, family, or household use of the claimant, that were not delivered or provided. Section 507(a)(7) grants priority status to such claims in an amount up to \$2775.00. The Claim asserts as its basis on the face of the proof of claim form that it is based on a judgment for unpaid rent and late fees.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

In this case, the asserted priority status of the Claim is inconsistent with the asserted basis of the Claim as set forth on the face of the proof of claim itself. A judgment in favor of Bemis and against the debtors for unpaid rent and late fees does not constitute a deposit by Bemis, of money with the debtors, for the lease or rental of property. Section 507(a)(7) gives priority status to claimants who rent or lease property from the debtor and who deposit money with the debtor in connection therewith. The court considers the inconsistent statements on the proof of claim form to be non-hearsay statements of a party-opponent under Fed. R. Evid. 801(d)(2) and admissible evidence sufficient to rebut the prima facie validity of the Claim and to justify its disallowance as a priority unsecured claim. Accordingly, the claim is disallowed as a priority claim and allowed as a general unsecured claim in its full filed amount of \$710.00.

The court will issue a minute order.

7. [13-31707](#)-B-13 RONALD/DANA FRANCO
SJS-3

OBJECTION TO CLAIM OF LAURA
JEAN BEMIS, CLAIM NUMBER 8
4-16-14 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. Claim number 8 on the court's claims register, filed on October 4, 2013, by Laura Jean Bemis ("Bemis") in the amount of \$710.00 (the "Claim"), is disallowed in its entirety, except to the extent already paid by the chapter 13 trustee.

The debtors allege without dispute that the Claim is a duplicate of claim

number 7 on the court's claims register, also filed on October 4, 2013 by Bemis in the amount of \$710.00 and based on an asserted "judgment for unpaid rent and late fee."

The court will issue a minute order.

8. [13-31707](#)-B-13 RONALD/DANA FRANCO
SJS-4

OBJECTION TO CLAIM OF LAURA
JEAN BEMIS, CLAIM NUMBER 9
4-16-14 [[42](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. Claim number 9 on the court's claims register, filed on October 4, 2013, by Laura Jean Bemis ("Bemis") in the amount of \$710.00 (the "Claim"), is disallowed in its entirety, except to the extent already paid by the chapter 13 trustee.

The debtors allege without dispute that the Claim is a duplicate of claim number 7 on the court's claims register, also filed on October 4, 2013 by Bemis in the amount of \$710.00 and based on an asserted "judgment for unpaid rent and late fee."

The court will issue a minute order.

9. [13-31707](#)-B-13 RONALD/DANA FRANCO
SJS-5

OBJECTION TO CLAIM OF LAURA
JEAN BEMIS, CLAIM NUMBER 16
4-16-14 [[45](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. Claim number 16 on the court's claims register, filed on October 17, 2013, by Laura Jean Bemis ("Bemis") in the amount of \$710.00 (the "Claim"), is disallowed in its entirety, except to the extent already paid by the chapter 13 trustee.

The debtors allege without dispute that the Claim is a duplicate of claim number 7 on the court's claims register, filed on October 4, 2013 by Bemis in the amount of \$710.00 and based on an asserted "judgment for unpaid rent and late fee." The Claim in this case sets forth essentially the same claim for rent owed to Bemis.

The court will issue a minute order.

10. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS MOTION TO CONFIRM PLAN
CAH-1 4-3-14 [[25](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed April 3, 2014, is denied.

The chapter 13 trustee's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

11. [14-20907](#)-B-13 LESLIE/JULIE WILLIAMS COUNTER MOTION TO DISMISS CASE
CAH-1 5-13-14 [[33](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 10, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

12. [12-33209](#)-B-13 OSCAR DELGADO MOTION TO MODIFY PLAN
CYB-4 4-1-14 [[110](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed April 1, 2014, is denied.

In addition to the reasons set forth in the trustee's opposition, the motion is also denied because the modified plan is dependent upon the court's approval of a loan modification agreement between the debtor and Bank of New York Mellon, holder of the second deed of trust on the debtor's residence. Elsewhere on this calendar, the court has dismissed the debtor's motion for approval of that agreement without prejudice. Without approval of the settlement agreement, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

The court will issue a minute order.

13. [12-33209](#)-B-13 OSCAR DELGADO
CYB-5

MOTION TO APPROVE LOAN
MODIFICATION
5-9-14 [[117](#)]

Tentative Ruling: The motion is dismissed.

The motion is not ripe for adjudication. The debtors seeks authorization to enter into a structured settlement agreement with Specialized Loan Servicing LLC, service or for the Bank of New York Mellon, as successor trustee to JPMorgan Chase Bank, N.A. ("Specialized") with respect to the loan obligation secured by the second deed of trust on the debtor's residence. However, the debtor has not shown that if the motion is granted that the loan modification will actually occur, as he has not shown sufficient evidence of Specialized's consent to the modification. The copy of the Structured Settlement Acceptance Form filed as a Exhibit "A" to the motion is signed by the debtor, but not by any employee of Specialized with authority to consent to the agreement; the accompanying letter to the debtor regarding the Structured Settlement Acceptance Form is also not signed by any employee of Specialized with authority to consent to the agreement. As a result, the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, loan modification agreement to which all necessary parties consent, no case or controversy within the meaning of Article III exists.

Specialized's consent to the loan modification may be manifested in ways other than executing the modification agreement. The creditor may file a response to the motion stating its agreement, or it may appear at the hearing on the motion and state its agreement on the record. Absent such evidence of consent, however, the motion is dismissed without prejudice.

The court will issue a minute order.

14. [13-28709](#)-B-13 BETHANY SANDERS
JPJ-2

OBJECTION TO CLAIM OF
DEPARTMENT OF EDUCATION/SALLIE
MAE, CLAIM NUMBER 9
3-18-14 [[39](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 9, filed on January 9, 2014, by Department of Education/Sallie Mae in the amount of \$37,635.96 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was October 30, 2013, and to file a government claim was December 26, 2013. The Claim was filed on January 9, 2014.

The court will issue a minute order.

15. [13-24213](#)-B-13 KAWATHA GETER AND CONTINUED MOTION TO MODIFY PLAN
CA-2 LATANAYA JOHNSON-GETER 3-28-14 [[28](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the modified plan filed March 28, 2014, (Dkt. 31) is confirmed with the following modification: Section 6.01 of the plan shall state that the debtors have paid a total of \$14,622.00 into the plan on or before month 12 (03/25/2014), followed by \$933 per month for 48 months. Total plan length is 60 months.

The trustee's opposition regarding the debtors' failure to provide the trustee with a domestic support obligation checklist is overruled because the debtors have provided the checklist to the trustee as of the date of the last hearing on this motion on May 13, 2014.

The trustee's opposition regarding the debtors' failure to file an amended statement of income and expenses on Official Bankruptcy Forms 6I and 6J is overruled because the debtors filed amended statements of income and expenses on the correct forms on May 21, 2014 (Dkt. 37).

The trustee's opposition regarding the "total paid in" date for plan payments specified in section 6.01 is resolved by the modification set forth in the ruling above.

The court will issue a minute order.

16. [14-22815](#)-B-13 ALBERT WINSTON BAUTISTA MOTION TO VALUE COLLATERAL AND
BMV-1 TO AVOID LIEN OF WELLS FARGO
HOME EQUITY
4-2-14 [[10](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Wells Fargo Home Equity, a division of Wells Fargo Bank, N.A. ("Wells Fargo") claim in this case secured by the second deed of trust on real property located at 502 Brix Marina Court, Fairfield, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$350,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. With a balance of approximately \$395,000.00. Thus, the value of the collateral available to Wells Fargo on its second deed of trust is \$0.00.

The court will issue a minute order.

17. [14-22815](#)-B-13 ALBERT WINSTON BAUTISTA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
 MOTION TO DISMISS CASE
 4-30-14 [[26](#)]

WITHDRAWN BY M.P.

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection and motion to dismiss are removed from the calendar. The trustee withdrew the objection and motion to dismiss on May 9, 2014 (Dkt. 29).

18. [11-26023](#)-B-13 ELAINE THOMPSON MOTION TO VALUE COLLATERAL OF
PLC-2 U.S. BANK, N.A.
 4-14-14 [[41](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of U.S. Bank, N.A., Trustee, Home Equity Loan Pass-through Certificate Series 2007-HSA2's ("USB") claim in this case secured by the second deed of trust on real property located at 4932 Gibbons Drive, Carmichael, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$220,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Wells Fargo Home Mortgage with a balance of approximately \$303,000.00. Thus, the value of the collateral available to USB on its second deed of trust is \$0.00.

The court will issue a minute order.

19. [09-26625](#)-B-13 JUSTINE FOUT MOTION TO VALUE COLLATERAL OF
SDB-12 SPRINGLEAF FINANCIAL SERVICES,
 INC.
 4-24-14 [[129](#)]

Tentative Ruling: The motion is dismissed without prejudice.

There is no evidence on the court's docket that parties in interest were given sufficient notice of the motion. The docket entry for the notice of hearing for the motion (Dkt. 132) is a copy of the motion itself (Dkt. 129). The notice of hearing referenced in the motion and in the debtor's certificate of service (Dkt. 133-135) does not appear on the docket.

The court will issue a minute order.

20. [14-21325](#)-B-13 DENNIS/IRENE SINGH MOTION TO CONFIRM PLAN
SDH-3 4-11-14 [[38](#)]

Tentative Ruling: None.

21. [14-21325](#)-B-13 DENNIS/IRENE SINGH COUNTER MOTION TO DISMISS CASE
SDH-3 5-7-14 [[63](#)]

Tentative Ruling: None.

22. [09-36633](#)-B-13 ROBERT/PAMALA PAULSON MOTION TO VALUE COLLATERAL OF
RWF-4 BANK OF AMERICA, N.A.
4-7-14 [[60](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s ("BofA") claim in this case secured by the second deed of trust on real property located at 1620 Mahaffey Court, Folsom, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$477,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by BofA with a balance of approximately \$556,000.00. Thus, the value of the collateral available to BofA on its second deed of trust is \$0.00.

The court will issue a minute order.

23. [09-41433](#)-B-13 CALVIN/OPHELIA KELLY
SDB-4

MOTION TO APPROVE LOAN
MODIFICATION
5-5-14 [[63](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The debtors are authorized to incur credit on the terms set forth in the Loan Modification Agreement filed as Exhibit "A" to the motion (Dkt. 66).

The court will issue a minute order.

24. [10-30137](#)-B-13 TY/REBECCA MATT
MG-2

CONTINUED MOTION TO INCUR DEBT
4-1-14 [[55](#)]

Tentative Ruling: This motion was continued from May 13, 2014, to allow the court to review the supplemental exhibit and proof of service filed by the debtors on May 13, 2014 (Dkt. 66, 67). The court now issues the following tentative ruling.

The motion is dismissed without prejudice.

The motion was not properly served. By this motion the debtor's request authorization to obtain a loan from Sun West Mortgage Company ("Sun West") for the purpose of refinancing the loan secured by the first deed of trust on their residence. The motion is governed by the provisions of Fed. R. Bankr. P. 4001(c). Bankruptcy Rule 4001(c)(1)(C) states that this motion must be served on certain parties and on "any other entity that the court directs." Bankruptcy Rule 4001(c)(3) states that notice of the hearing shall be given to the parties on whom service is required by 4001(c)(1) and "to such other entities as the court may direct."

Based on the foregoing, the court requires that the debtors serve (consistent with the provisions of Bankruptcy Rule 7004) a motion to refinance on the United States trustee, the chapter 13 trustee, and the creditor who is refinancing the loan. The court also requires that the debtor give notice of the motion to all other creditors. In this case, the debtors' proofs of service (Dkt. 58, 63) show that they served the motion on the United States trustee, the chapter 13 trustee and all creditors. However, they did not serve the motion on Sun West consistent with the provisions of Fed. R. Bankr. P. 7004. Pursuant to Fed. R. Bankr. P. 7004(b)(3), service on a corporation or unincorporated association is accomplished by serving the motion to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. The supplemental proof of service filed by the debtors (Dkt. 67) does not show that they served Sun West to the attention of an officer or agent authorized to receive service of process.

Sun West may, if it wishes, appear at the hearing, in court or by telephone,

and waive the service defect.

The court will issue a minute order.

25. [13-29337](#)-B-13 NORMA HART
JPJ-1

OBJECTION TO CLAIM OF PRO
TRANSPORT 1, CLAIM NUMBER 9
3-18-14 [[26](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 9, filed on December 12, 2013, by Pro transport 1 in the amount of \$637.03 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was November 20, 2013, and to file a government claim was January 13, 2014. The Claim was filed on December 12, 2013.

The court will issue a minute order.

26. [14-23337](#)-B-13 ASHLEY PITNER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[24](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On May 14, 2014, the debtor filed an amended plan and motion to confirm. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss.
11 U.S.C. § 1323(b).

The court will issue a minute order.

27. [09-35241](#)-B-13 ANTHONY DICUS AND LILIA
BJK-1 LOPEZ

CONTINUED MOTION TO SET ASIDE
4-1-14 [[109](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is submitted on the papers. Briefing for this matter is

closed. The court will issue a separate disposition and order.

28. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO CONFIRM PLAN
MMM-2 3-18-14 [[94](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed March 18, 2014, is denied.

The trustee's opposition is sustained for the reasons set forth therein.

The court will issue a minute order.

29. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN COUNTER MOTION TO DISMISS CASE
MMM-2 5-12-14 [[110](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 10, 2014 the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

30. [12-36242](#)-B-13 SANJAY RAM AND LINDA OBJECTION TO CLAIM OF GLENN
JPJ-2 HOWE-RAM COUNTY TAX COLLECTOR, CLAIM
NUMBER 6
3-18-14 [[48](#)]

CASE DISMISSED 4/4/14

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is dismissed.

The objection is moot. By order entered April 7, 2014 (Dkt. 54) the bankruptcy case was dismissed.

The court will issue a minute order.

31. [11-28943](#)-B-13 DEBBY NAIMAN
JPJ-1

OBJECTION TO CLAIM OF HSBC BANK
USA, CLAIM NUMBER 1 AND CLAIM
NUMBER 3
3-18-14 [[49](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the number of matters on this morning's three related calendars (_ matters), the court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 3, filed on April 25, 2011, by HSBC Bank USA, N.A. in the amount of \$5144.07 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim is a duplicate of claim number 1, also filed by HSBC Bank USA, N.A. in the amount of \$5144.07. Both claims recite the same amount, are filed as unsecured nonpriority claims, recite the same account number and are filed with identical account summaries.

The court will issue a minute order.

32. [12-37144](#)-B-13 CHARLES/SUSAN MCBRYDE
CJY-1

MOTION TO MODIFY PLAN
4-22-14 [[25](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled in part and sustained in part. The motion to confirm the modified plan filed April 22, 2014 is denied.

The chapter 13 trustee's request that any order confirming the plan state that the debtors shall turn over all of the net proceeds of any bonuses received by the debtors in months 30, 42 and 54 of the plan is overruled. The trustee cites no legal authority supporting the request; the court construes the request as one made under 11 U.S.C. § 1325(b)(1)(B), i.e., an attempt to obtain additional disposable income for distribution to unsecured creditors under the plan.

The debtors' Chapter 13 Statement of Current Monthly Income and Calculation of Commitment. And Disposable Income, Official Form 22C (Dkt. 9 at 34) shows that the debtors are "above-median" debtors who have a positive net monthly disposable income of \$721.63 per month. Pursuant to Hamilton v. Lanning, 560 U.S. 505 (2010), Form 22C establishes a presumption that the debtors must pay no less than \$43,297.80 to unsecured creditors over the 60-month term of their chapter 13 plan. That presumption may be rebutted by a showing of a substantial change in circumstances in either the debtors' income or their expenses and known or virtually certain figures to replace the changed income or expense figures. In this case, the plan proposes a dividend of 68.81% to be paid to general unsecured creditors on estimated unsecured claims of \$77,142.70, or \$53,081.89. The plan as proposed is consistent with the presumption created by the debtors' Form 22C. The chapter 13 trustee has made no showing of evidence to rebut the presumption.

Although the chapter 13 trustee's objection under 11 U.S.C. § 1325(b)(1)(B) is overruled, the motion is denied because the debtors have not sustained their burden under 11 U.S.C. § 1325(a)(6) of showing that they will be able to make all payments proposed by the plan. The plan proposes lump sum payments of \$4,500.00 in months 30, 42 and 54 of the plan, based on bonuses to be received by joint debtor Susan McBryde. The debtors' supporting declaration (Dkt. 27), however, does not substantiate that Mrs. McBryde will receive such bonuses in the future. The declaration states that Mrs. McBryde does not anticipate receiving a bonus in the amount of \$4,879.56 in the future, which is an amount greater than \$4,500.00. It fails to state that she expects to receive future bonuses in the amount of \$4,500.00 which can be paid in the months proposed in the plan or to include a factual basis for any such expectation.

The chapter 13 trustee's opposition regarding the total amount of payments made by the debtors as of April 25, 2014, is sustained for the reason set forth therein.

The court will issue a minute order.

33. [12-37144](#)-B-13 CHARLES/SUSAN MCBRYDE CONTINUED MOTION TO INCUR DEBT
CJY-2 4-22-14 [[34](#)]

Tentative Ruling: This motion continued from May 13, 2014, to allow the debtors to properly serve the motion. The debtors did so timely. This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

34. [12-41445](#)-B-13 KEVIN/MA NEKA CORNELIUS CONTINUED MOTION TO MODIFY PLAN
PGM-2 2-7-14 [[39](#)]

Tentative Ruling: None.

35. [14-21547](#)-B-13 JENNINE QUIRING MOTION TO CONFIRM CHAPTER 13
RJM-4 PLAN
3-21-14 [[29](#)]

Tentative Ruling: The motion is continued to June 24, 2014, at 9:32 a.m., to be heard after the continued meeting of creditors under 11 U.S.C. § 341, presently set for June 19, 2014, at 8:30 a.m.

The court will issue a minute order.

36. [14-23150](#)-B-13 SERGIO FIGUEROA AND NORMA MOTION TO VALUE COLLATERAL OF
TOG-1 RAMIREZ SUNTRUST BANK
4-25-14 [[14](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

37. [13-28451](#)-B-13 DOUGLAS SCOTT OBJECTION TO CLAIM OF CACH LLC,
JPJ-2 CLAIM NUMBER 9
3-18-14 [[93](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the number of matters on this morning's three related calendars (_ matters), the court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 9, filed on October 31, 2013, by CACH, LLC in the amount of \$9460.91 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-government claim was October 30, 2013, and to file a government claim was December 23, 2013. The Claim was filed on October 31, 2013.

The court will issue a minute order.

38. [13-36051](#)-B-13 KEVIN MEADOWS MOTION TO CONFIRM PLAN
PLG-2 4-1-14 [[35](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the amended plan filed April 1, 2014 (Dkt. 40) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

39. [09-34253](#)-B-13 GABRIEL/EMELINE SAMONTE MOTION TO VACATE DISMISSAL OF
SDB-1 CASE
4-29-14 [[74](#)]
CASE DISMISSED 3/28/14

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the dismissal order entered on March 28, 2014 (Dkt. 70) is vacated.

The movants' reliance on F. R. Civ. P. 60(b)(1) is misplaced. That rule deals with ordinary negligence or neglect, by an attorney, and the movants are charged with the results of such conduct. Community Dental Services v. Tani, 282 F.3d 1164, 1170 (9th Cir. 2002). However, in the absence of opposition, the court finds that the debtors' failure to timely perform any of the conditions set forth in the chapter 13 trustee's notice of default and application to dismiss (Dkt. 57) was the result of abandonment of the client by counsel, which can constitute extraordinary circumstances beyond their control that prevented them from proceeding with the prosecution of the action in a proper fashion pursuant to F. R. Civ. P. 60(b)(6), incorporated by F. R. Bankr. P. 9024. Id. at 1168.

The court will issue a minute order.

40. [10-22953](#)-B-13 RUSSELL STIGER MOTION TO MODIFY PLAN
SS-6 4-22-14 [[105](#)]

Tentative Ruling: The motion is granted, and the modified plan filed April 22, 2014 (Dkt. 109) is confirmed with the following modification in the order confirming the plan: the following language is stricken from Section 6.07 of the Additional Provisions: "Unless otherwise permitted by this Court, all future claims for priority tax debt by this creditor shall be disallowed and deemed waived."

The court construes the above language as the debtor's attempt to preemptively disallow any claims that the Franchise Tax Board might file in this case. This provision violates 11 U.S.C. § 502(a), which provides that a proof of claim is deemed allowed unless it is objected to. 11 U.S.C. § 502(a). Pursuant to Section 5.02 of the form plan, the debtor has a duty to comply with all provisions of the Bankruptcy Code. The plan must also comply with all applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1325(a)(1). The debtor cites to no authority in support of the proposition that the Additional Provisions section of a chapter 13 plan can be utilized to disallow or waive potential future proofs of claim in lieu of a formal claims objection. LBR 9014-1(d)(5).

The court will issue a minute order.

41. [10-22953](#)-B-13 RUSSELL STIGER
SS-7

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SCOTT SHUMAKER
FOR SCOTT SHUMAKER, DEBTOR'S
ATTORNEY
4-22-14 [[111](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved in the amount of \$4,195.50 in fees and expenses to be paid by the trustee pursuant to the terms of the confirmed chapter 13 plan (Dkt. 109) as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Except as so ordered, the motion is denied.

On February 8, 2010, the debtor filed a chapter 13 petition. As part of the confirmation of the debtor's chapter 13 plan, the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). This court authorized payment of fees and costs totaling \$3,500.00 through the plan (Dkt. 51). The applicant now seeks additional compensation in the amount of \$4,195.50 in fees and expenses.

As set forth in the application, these fees and expenses are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work the applicant has done in this case is sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

42. [14-24353](#)-B-13 VASUDEVA BENARD
PGM-1

MOTION TO EXTEND AUTOMATIC STAY
5-13-14 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

43. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL
RGJ-2

MOTION TO CONFIRM PLAN
4-15-14 [[27](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the plan filed April 15, 2014 (Dkt. 31) is denied.

The court will issue a minute order.

44. [14-20854](#)-B-13 ERNESTO/MYRNA CIVIL
RGJ-2

COUNTER MOTION TO CONDITIONALLY
DISMISS CASE
5-13-14 [[38](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 38) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 10, 2014, the debtors file a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

45. [14-24054](#)-B-13 JOHN/AMANDA FEDERICO
FF-1

MOTION TO VALUE COLLATERAL OF
CARRINGTON RESOLUTION SERVICE
4-28-14 [[8](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Carrington Resolution Service's claim secured by the second deed of trust on real property located at 5804 Muldrow Road, Sacramento, CA 95841 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$185,553.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar with a balance of approximately \$268,110.78. Thus, the value of the collateral available to Carrington Resolution Service on its second deed of trust is \$0.00.

The court will issue a minute order.

46. [10-39255](#)-B-13 ROBERT/CINDY SPILMAN
JPJ-1

OBJECTION TO CLAIM OF NATIONAL
CAPITAL MANAGEMENT,
LLC/SANTANDER CONSUMER, CLAIM
NUMBER 25
3-18-14 [[45](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 25, filed on July 16, 2012, by National Capital Management, LLC/Santander Consumer in the

amount of \$10,709.47 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was December 1, 2010. The Claim was filed on July 16, 2012.

The court will issue a minute order.

47. [14-23055](#)-B-13 GUSTAVO TAPIA MOTION TO VALUE COLLATERAL OF
TOG-1 OCWEN LOAN SERVICING, LLC
4-25-14 [[16](#)]

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Ocwen Loan Servicing, LLC's claim secured by the second deed of trust on real property located at 773 Meadowlark Drive, Fairfield, CA 94533 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$159,443.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC with a balance of approximately \$172,500.00. Thus, the value of the collateral available to Ocwen Loan Servicing, LLC on its second deed of trust is \$0.00.

The court will issue a minute order.

48. [14-23055](#)-B-13 GUSTAVO TAPIA OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-30-14 [[21](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed March 26, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

49. [11-38161](#)-B-13 TRACY JAMES
RAC-1

MOTION TO VACATE DISMISSAL OF
CASE
4-25-14 [[28](#)]

CASE DISMISSED 4/4/14

Tentative Ruling: The motion is granted, and the dismissal order entered on April 4, 2014 (Dkt. 25) is vacated.

In the absence of opposition, the court finds that the debtor's failure to timely perform any of the conditions set forth in the chapter 13 trustee's notice of default and application to dismiss (Dkt. 22) was the result of "mistake or inadvertence" pursuant to Federal Rule of Civil Procedure 60(b)(1), incorporated by Federal Rule of Bankruptcy Procedure 9024. Counsel should note that the same facts cannot constitute grounds for relief under both F. R. Civ. P. 60(b)(1) and 60(b)(6). Rule 60(b)(6) is exclusive of the other grounds for relief listed in Rule 60. Community Dental Services v. Tani, 282 F.3d 1164, 1168 n. 8 (9th Cir. 2002).

The court will issue a minute order.

50. [14-23462](#)-B-13 MIKKY TALLMAN
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[15](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's first objection that the debtor failed to appear at the duly noticed first meeting of creditors is overruled. The trustee's second objection that the debtor failed to provide a copy of the Domestic Support Obligation Checklist is sustained. Confirmation of the plan filed April 3, 2014 (Dkt. 6) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's first objection is overruled because, although the debtor failed to appear at the first meeting of creditors held on May 1, 2014, he did appear at the continued meeting of creditors on May 15, 2014. The meeting of creditors was concluded as to the debtor on that date. Therefore, the trustee's first objection has been resolved.

The court will issue a minute order.

51. [14-23364](#)-B-13 CHARLES/KRISTIN STOUT
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[14](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection and motion to dismiss are removed from the calendar. The trustee withdrew the objection and motion to dismiss on May 19, 2014 (Dkt. 21).

52. [13-33165](#)-B-13 ERIC/LAURA MCBRIDE
EJS-2

MOTION TO MODIFY PLAN
4-22-14 [[27](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed April 22, 2014 (Dkt. 29) is denied.

The court will issue a minute order.

53. [14-23165](#)-B-13 JOSE VERDUSCO
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
4-30-14 [[21](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the plan filed March 28, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

54. [14-23465](#)-B-13 JENNIFER SPENCER
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[21](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed April 3, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

55. [14-20871](#)-B-13 DONALD/TYSHA RAINEY
KK-1

OBJECTION TO CONFIRMATION OF
PLAN BY GREEN TREE SERVICING,
LLC
4-24-14 [[17](#)]

Tentative Ruling: Creditor Green Tree Servicing, LLC ("Green Tree")'s objection is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The objection is overruled.

The objection was not timely filed. Pursuant to the Notice of Commencement of Case Under Chapter 13, Meeting of Creditors and Deadlines (Dkt. 9), objections to confirmation of the initial plan were to have been filed and served no later than March 13, 2014. Green Tree did not file and serve this objection until April 24, 2014.

The court will issue a minute order.

56. [14-22472](#)-B-13 TIMOTHY KRUSE
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-8-14 [[39](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues

The court will issue a minute order.

57. 14-22472-B-13 TIMOTHY KRUSE
WRR-1

OBJECTION TO CONFIRMATION OF
PLAN BY THE LABORERS TRUST
FUNDS
5-6-14 [35]

Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

58. 13-21474-B-13 SHIRLEY STEWART
MET-6

MOTION TO MODIFY PLAN
4-15-14 [73]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed April 15, 2014 (Dkt. 77) is confirmed.

The motion is granted in the absence of opposition. The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 45.00% to 31.00%. The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

59. [14-20875](#)-B-13 SANDRA CRAZE
HLG-2

MOTION TO CONFIRM PLAN
4-14-14 [[27](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the plan filed January 31, 2014 (Dkt. 5) will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtor shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the plan.

60. [11-25678](#)-B-13 DENNIS/LEARA MORGA
JPJ-1

OBJECTION TO CLAIM OF PNC
MORTGAGE, CLAIM NUMBER 6
3-18-14 [[45](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim no. 6, filed on December 6, 2013, by PNC Mortgage in the amount of \$519,130.39 (the "Claim"), is disallowed except to the extent previously paid by the trustee.

The Claim was not timely filed. The last date to file a non-governmental claim was July 13, 2011. The Claim was filed on December 6, 2013.

The court will issue a minute order.

61. [14-23378](#)-B-13 CHRISTINE KELLERMANN
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[26](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's first three objections are sustained. The trustee's objection that the plan fails to comply with 11 U.S.C. § 1325(a)(4) is overruled without prejudice. Confirmation of the plan filed April 1, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to

The trustee's objection under 11 U.S.C. § 1325(a)(4) is overruled because the court is unclear as to how the trustee calculated the amount of non-exempt property in the estate. According to the trustee, his review of the debtor's Schedules A, B, and C reveals a total of \$7,721.00 in non-exempt property in the estate, and the plan fails the liquidation analysis test of 11 U.S.C § 1325(a)(4) because the total amount to be paid to unsecured creditors is only \$3,987.79. However, the court's review of Schedules A (Dkt. 1, p.16), B (Dkt. 25, p.4), and C (Dkt. 25, p.7) reveals no non-exempt property in the estate. Furthermore, the plan provides for a 0.00% dividend to be paid on approximately \$87,456.35 in unsecured claims. The trustee has failed to adequately explain how he has calculated his figures. Accordingly, the objection is overruled.

OBJECTION TO CLAIM OF CLC
CONSUMER SERVICES, CLAIM NUMBER
13
3-18-14 [39]

MOTION TO CONFIRM PLAN
4-11-14 [36]

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lists two separate claims held by the SLB: a \$2,500.00 claim for "failure to maintain worker's comp. ins.", and a \$2,626.47 claim for "collections." In an apparent attempt to properly classify the claim for "collections" as an unsecured priority claim subject to treatment under Class 5 of the Plan, the debtor transferred this claim to amended Schedule E (Dkt. 46, p.2). However, the debtor has failed to explain how transferring this claim from Schedule F to Schedule E suddenly makes it a priority claim pursuant to 11 U.S.C. § 507. The debtor cites to no subsection of 11 U.S.C. § 507 under which a claim for "collections" would qualify. Accordingly, this objection is sustained.

Because the court is sustaining the trustee's first objection, it cannot incorporate the language suggested by the trustee in his second objection into an order confirming plan. Therefore, the second objection is also sustained.

The court will issue a minute order.

64. [14-20384](#)-B-13 KEVIN VANARKEL
SJS-1

COUNTER MOTION TO DISMISS CASE
5-13-14 [[45](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 45) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

65. [10-51785](#)-B-13 DANIEL/PAULA SETTLE
JDM-6

MOTION TO MODIFY PLAN
4-9-14 [[103](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed April 9, 2014 (Dkt. 105) is denied.

The court is not persuaded by the supplemental declaration (Dkt. 112) and related exhibits (Dkt. 113) filed by the debtors on May 13, 2014. Although it appears that the debtors entered into a trial loan modification agreement with Wells Fargo Home Mortgage on March 21, 2014 (Dkt. 113, p.2), they did so without first seeking court authorization. Trial loan modifications and permanent loan modifications are an incurrence of new debt by the debtors which requires court approval after a properly noticed motion and hearing under the applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rules. To date, the debtors have failed to seek approval of a trial loan modification agreement. Accordingly, the trustee's opposition

is sustained and the motion to confirm is denied.

Furthermore, there is no evidence to support a conclusion that a final loan modification will be obtained or that the mortgage arrears will be incorporated into a final loan modification. Mrs. Settle's belief that those things will occur is insufficient.

The court will issue a minute order.

66. [14-23487](#)-B-13 ROBERT COVERT
JPJ-1
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
5-7-14 [[25](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The trustee's objection and motion to dismiss are dismissed.

The trustee's objection and motion to dismiss are moot. On May 5, 2014, the debtor filed an amended plan (Dkt. 18) and motion to confirm it (Dkt. 15), setting the matter for hearing on June 24, 2014, at 9:32 a.m. The amended plan supersedes the plan to which the trustee's objection is directed, and the motion to confirm provides the relief sought in the motion to dismiss. 11 U.S.C. § 1323(b).

The court will issue a minute order.

67. [12-41261](#)-B-13 GRANT/DIANA FLOWERS
JPJ-2
CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS
2-11-14 [[202](#)]

Tentative Ruling: None.

68. [12-41261](#)-B-13 GRANT/DIANA FLOWERS
MAS-10
CONTINUED MOTION FOR APPROVAL
OF STIPULATION AND COMPROMISE
OF A CONTROVERSY
4-15-14 [[225](#)]

Tentative Ruling: This motion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The motion to approve the stipulation filed February 14, 2014 (Dkt. 206) (the "Stipulation") is dismissed without prejudice.

The motion is not ripe, and therefore the court lacks jurisdiction over the matter. By this motion, the debtors seek court approval of the Stipulation, which purports to resolve a long-standing dispute between the debtors and creditor Glenda Cibula ("Ms. Cibula") regarding the motion to value collateral of Ms. Cibula filed on August 27, 2013 (Dkt. 163). However, the debtors have failed to establish that there is an actual agreement to which Ms. Cibula consents for the court to approve.

The absence of an actual agreement for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual agreement to which Ms. Cibula agrees, no case or controversy within the meaning of Article III exists.

The court has reviewed the qualified non-opposition filed by Ms. Cibula on April 28, 2014 (Dkt. 228) and finds that there remains a dispute as to a material term of the Stipulation. Specifically, the parties do not seem to be in agreement as to the potential cash value of a viatical settlement, the value of which is crucial in fixing the amount of Ms. Cibula's secured claim for purposes of chapter 13 plan confirmation. The Stipulation states that the cash value of the viatical settlement will be \$35,000.00 (Dkt. 206, p.2, line 7); however, Ms. Cibula now believes that the cash value of the viatical settlement is closer \$33,000.00 (Dkt. 228, p.2, line 9), which would grant her a larger secured claim under the terms of the Stipulation. The court cannot approve the Stipulation if the parties are not in agreement as to all terms of the Stipulation. Additionally, the court cannot accept Ms. Cibula's suggestion of issuing an order which adds terms not stated in the Stipulation. If the parties wish to have the court approve a settlement agreement, all final terms must be incorporated into a single agreement, and a motion for approval of the agreement must be filed, served, and set for hearing consistent with the requirements of Federal Rules of Bankruptcy Procedure 9019 and 2002(a)(3). Accordingly, the motion is dismissed without prejudice.

The court will issue a minute order.

69. [12-41261](#)-B-13 GRANT/DIANA FLOWERS
MAS-9

CONTINUED MOTION TO CONFIRM
PLAN
3-4-14 [[207](#)]

Tentative Ruling: Creditor JPMorgan Chase Bank, N.A.'s opposition is sustained. The trustee's opposition is sustained. The motion to confirm the amended plan filed March 4, 2014 (Dkt. 212) is denied.

The court will issue a minute order.

70. [13-36091](#)-B-7 JAMES/MOLLY ALEXANDER MOTION FOR RECONSIDERATION OF
LBG-2 ORDER
5-13-14 [[45](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

This matter is continued to June 3, 2014, at 9:32 a.m.

The case was converted to one under Chapter 7 on May 1, 2014 (Dkt. 40). Accordingly, this matter is continued to the court's next Chapter 7 Law and Motion calendar on June 3, 2014, at 9:32 a.m.

The court will issue a minute order.

71. [14-23491](#)-B-13 VIRGINIA LAROT OBJECTION TO CONFIRMATION OF
JPJ-1 PLAN BY JAN P. JOHNSON AND/OR
CONDITIONAL MOTION TO DISMISS
CASE
5-8-14 [[16](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the plan filed April 4, 2014 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

72. [13-33793](#)-B-13 CHRIS/ADELE JOHNSON MOTION TO MODIFY PLAN
RWH-3 4-11-14 [[38](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed April 11, 2014 (Dkt. 39) is denied.

The court will issue a minute order.

73. [14-21464](#)-B-13 WILLIAM MCDANIELS JR.
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
3-31-14 [[16](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection that the debtor failed to utilize mandatory Official Bankruptcy Forms 6I and 6J is sustained. The trustee's objection that the plan fails to provide for treatment of the secured claim filed by the Internal Revenue Service is sustained. The trustee's remaining objections are overruled. Confirmation of the plan filed February 18, 2014 (Dkt. 7) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before June 10, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The trustee's final two objections are overruled because the trustee states in his supplemental response filed May 15, 2014 (Dkt. 27) that these objections have been resolved.

The court will issue a minute order.

74. [12-40994](#)-B-13 MICHAEL LITTLE
DBJ-8
CASE DISMISSED 5/1/14

MOTION TO CONFIRM PLAN
4-3-14 [[245](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is dismissed.

The motion is moot. The bankruptcy case was dismissed by order entered May 1, 2014 (Dkt. 266).

The court will issue a minute order.

75. [10-41997](#)-B-13 ROBERT/MARCY WILKERSON
SDB-5

MOTION TO MODIFY PLAN
4-22-14 [[66](#)]

Tentative Ruling: The trustee's opposition is overruled. The motion is granted, and the modified plan filed April 22, 2014 (Dkt. 71) is

confirmed with the following modification: Section 6.01 of the Additional Provisions is modified to state that "the debtors have paid a total of \$42,494.90 to the trustee through May 25, 2014. Commencing June 25, 2014, the monthly plan payments shall be \$418.00 for the remainder of the plan."

The court will issue a minute order.